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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 **NATIONAL INSTITUTE OF FAMILY**
13 **AND LIFE ADVOCATES d/b/a NIFLA,**
14 **a Virginia corporation; PREGNANCY**
15 **CARE CENTER d/b/a PREGNANCY**
16 **CARE CLINIC, a California corporation;**
and **FALLBROOK PREGNANCY**
RESOURCE CENTER, a California
corporation;

17 **Plaintiffs,**

18 **v.**

19 **KAMALA HARRIS,** in her official
20 capacity as Attorney General for the State
of California; **THOMAS**
21 **MONTGOMERY,** in his official capacity
22 as County Counsel for San Diego County;
MORGAN FOLEY, in his official capacity
23 as City Attorney for the City of El Cajon,
CA; and **EDMUND G. BROWN, JR.,** in

Case No. '15CV2277 JAH DHB

**VERIFIED COMPLAINT FOR
DECLARATORY,
INJUNCTIVE AND OTHER
RELIEF**

1 his official capacity as Governor of the
2 State of California;

3 **Defendants.**

4 Come now the Plaintiffs, by and through their attorneys, and for their
5 causes of action against Defendants aver the following:

6 **INTRODUCTION**

7 1. This case is a federal civil rights action brought pursuant to 42
8 U.S.C. § 1983 challenging the constitutionality of California Assembly Bill 775,
9 the Reproductive FACT Act (hereinafter the “Act”), which was signed by
10 California Governor Edmund Gerald Brown on October 9, 2015. A copy of the
11 Act is attached hereto as Exhibit A.

12 2. Plaintiffs are a national non-profit pro-life membership organization
13 with 111 affiliates in California, and two of those affiliates in San Diego County.
14 They seek to provide help and pro-life information to women in unplanned
15 pregnancies so that they will be supported in choosing to give birth, and practical
16 medical or non-medical support free of charge in support of Plaintiffs’ pro-life
17 viewpoint.

18 3. The Act, however, imposes government compelled speech upon the
19 Plaintiff pregnancy centers due to their support for pregnant women, and in ways
20 that undermine the centers’ messages.

21 4. It requires licensed medical pregnancy centers such as Plaintiff
22 Pregnancy Care Clinic (PCC) and other similar members of Plaintiff National
23 Institute of Family and Life Advocates (NIFLA) to post a disclosure saying the

1 State of California provides free or low-cost abortion and contraception services
2 and providing a phone number to refer or arrange for such services.

3 5. The Act also requires unlicensed non-medical pregnancy centers,
4 such as Plaintiff Fallbrook Pregnancy Resource Center (Fallbrook) and other
5 similar NIFLA members, to post disclaimers within their facilities and in all their
6 advertising materials negatively emphasizing that they do not have a licensed
7 medical provider on staff.

8 6. Such disclaimers must be posted merely because the Plaintiffs serve
9 pregnant women, and not with any prerequisite that a center has engaged in
10 improper behavior or has suggested they have a licensed medical provider.

11 7. The Act is therefore unconstitutional under the First Amendment to
12 the United States Constitution. It is a classic example of compelled speech in
13 violation of the Free Speech Clause. The law is expressly content-based both
14 because it compels the content of speech and because it regulates only speakers
15 who wish to discuss the subject of pregnancy rather than any other health topic.
16 The law is also viewpoint based for forcing licensed facilities to promote
17 abortion, and by exempting facilities that offer certain family planning or Medi-
18 Cal services. For similar reasons the Act violates the free speech clause of the
19 California Constitution, Art. I, Sec. 2(a).

20 8. The law is also impermissibly vague under the Due Process Clause
21 of the Fourteenth Amendment with respect to various terms applicable to
22 unlicensed centers.

23 9. The Act also violates federal statutory law, the Coats-Snowe

1 Amendment, 42 U.S.C. § 238n, that protects licensed health care entities from
2 being required to refer for abortion or make arrangements for such referrals.

3 10. Accordingly, preliminary and permanent injunctive and declaratory
4 relief against the Act are warranted.

5 11. PCC and Fallbrook are directly regulated by the Act.

6 12. NIFLA asserts organizational standing on behalf of its California
7 members, which are licensed or unlicensed centers throughout the State of
8 California that, just like PCC and Fallbrook, the Act regulates and compels to
9 speak in violation of their views and mission. As discussed below, NIFLA's
10 claims fit comfortably within the Supreme Court's organizational standing to
11 allow it to obtain judicial relief for its members.

12 13. The Act goes into effect January 1, 2016.

13 14. Therefore preliminary injunctive relief is needed before that date in
14 order to prevent irreparable harm to the rights of Plaintiffs and NIFLA's
15 California members.

16 **JURISDICTION AND VENUE**

17 15. This Court has jurisdiction over the federal claims by operation of 28
18 U.S.C. §§ 1331 and 1343. This Court has authority to grant the requested
19 injunctive relief under 28 U.S.C. § 1343; the requested declaratory relief under 28
20 U.S.C. §§ 2201 and 2202; and costs and attorneys fees under 42 U.S.C.
21 § 1988(b). This Court has supplemental jurisdiction over the Plaintiffs' claim
22 under the free speech clause of the California Constitution pursuant to 28 U.S.C.
23 § 1367.

1 16. Venue lies in the Federal District Court for the Southern District of
2 California pursuant to 28 U.S.C. § 1391(b). A substantial part of the actions or
3 omissions giving rise to this case occurred within the District, and at least one
4 Defendant resides in this District.

5 **IDENTIFICATION OF THE PARTIES**

6 **Plaintiffs**

7 17. Plaintiff National Institute of Family and Life Advocates is a
8 religious not-for-profit corporation duly incorporated under the laws of Virginia,
9 with its principal place of business at 5610 Southpoint Ctr. Blvd., #103,
10 Fredericksburg, VA 22407.

11 18. It is comprised of member pregnancy centers from across the nation,
12 including 111 in the state of California, that provide medical or non-medical
13 information and services without charge to their clients, and are therefore
14 regulated by the Act.

15 19. Seventy-three of NIFLA's California members provide licensed
16 medical services, while thirty-eight provide only non-medical services.

17 20. Plaintiff Pregnancy Care Clinic is a religious not-for-profit
18 corporation duly incorporated under the laws of California, with its principal
19 place of business at 677 S. Magnolia Avenue, El Cajon, CA, 92020.

20 21. It provides pregnancy-related licensed medical as well as non-
21 medical information and services without charge to its clients under the
22 supervision of its executive director, Josh McClure, and in furtherance of its
23 religious beliefs.

1 22. Plaintiff Fallbrook Pregnancy Center is a religious not-for-profit
2 corporation duly incorporated under the laws of California, with its principal
3 place of business at 113 E. Hawthorne Street, Fallbrook, CA 92028, where it
4 provides pregnancy-related non-medical information and services without charge
5 to its clients under the supervision of its executive director, Carolyn Koole, and in
6 furtherance of its religious beliefs.

7 **Defendants**

8 23. Defendant Kamala Harris is the Attorney General for the State of
9 California and is sued in her official capacity. She is responsible under the Act
10 for enforcing its provisions against entities in violation thereof including the
11 Plaintiffs and NIFLA's California Members.

12 24. Defendant Thomas Montgomery is the County Counsel for San
13 Diego County, California and is sued in his official capacity. He is responsible
14 under the Act for enforcing its provisions against entities in violation thereof in
15 San Diego County, including the Plaintiff facilities and NIFLA's California
16 Members in San Diego County.

17 25. Defendant Morgan Foley is the City Attorney for City of El Cajon,
18 California and is sued in his official capacity. He is responsible under the Act for
19 enforcing its provisions against entities in violation thereof in El Cajon, including
20 the Plaintiff facilities and NIFLA's California Members in El Cajon.

21 26. Defendant Edmund G. Brown, Jr., is the Governor of the State of
22 California, and is sued in his official capacity. He is the chief executive of the
23 State of California and is responsible for funds that the state has received from

1 the federal government subjecting it to 42 U.S.C. § 238n.

2
3 **FACTUAL ALLEGATIONS**

4 27. Plaintiffs provide compassionate and loving information and services
5 to serve the medical, emotional, and material needs of women who face
6 unplanned pregnancies to help them choose birth for their children.

7 **Pregnancy Care Clinic**

8 28. Pregnancy Care Clinic (hereinafter “PCC”) exists to serve women
9 and their unborn children.

10 29. PCC provides both medical and non-medical pro-life information
11 and services for no charge to women in unplanned pregnancies as a licensed
12 primary care provider.

13 30. PCC is licensed by the California Department of Public Health as a
14 free community clinic, and is a licensed clinical laboratory.

15 31. PCC operates as a medically licensed primary care center in the State
16 of California.

17 32. PCC provides its services to women in unplanned pregnancies
18 pursuant to its pro-life viewpoint, desiring to empower the women it serves to
19 choose life for their child, rather than abortion.

20 33. Medical services provided by PCC include: urine pregnancy testing,
21 ultrasound examinations, medical referrals, prenatal vitamins, information on
22 STDs, information on natural family planning, health provider consultation, and
23 other clinical services.

1 34. The medical team at PCC consists of two
2 Obstetrician/Gynecologists, one Radiologist, one Anesthesiologist, one Certified
3 Nurse Midwife, one Nurse Practitioner, ten Nurses, and two Registered
4 Diagnostic Medical Sonographers.

5 35. Non-medical services provided by PCC include: peer counseling and
6 education, emotional support, maternity clothes, baby supplies, support groups,
7 and healthy family support.

8 36. PCC is a religious organization and pursues its pro-life message and
9 activities as an exercise of its religious belief is a gift of God that should not be
10 destroyed by abortion.

11 **Fallbrook Pregnancy Center**

12 37. Fallbrook Pregnancy Center (hereinafter “Fallbrook”) provides non-
13 medical services for no charge to women in unplanned pregnancies in furtherance
14 of its pro-life viewpoint.

15 38. Fallbrook provides free pregnancy test kits that women administer
16 and diagnose themselves, educational programs, resources and community
17 referrals, maternity clothes, and baby items.

18 39. Fallbrook contracts with a separate organization that is a licensed
19 medical provider of ultrasound services. Fallbrook refers women to that
20 provider’s separate mobile facility located nearby.

21 40. Fallbrook is a religious organization and pursues its pro-life message
22 and activities as an exercise of its religious belief that human life is a gift of God
23 that should not be destroyed by abortion.

1 **National Institute of Family and Life Advocates**

2 41. NIFLA is a non-profit membership organization comprised of a
3 network of both medical and non-medical centers providing pro-life information
4 services to women in unplanned pregnancies.

5 42. NIFLA is incorporated as a religious organization.

6 43. NIFLA provides both medical and non-medical pro-life pregnancy
7 centers with legal resources and counsel, with the aim of developing a network of
8 life-affirming ministries in every community across the nation in order to achieve
9 an abortion-free America.

10 44. NIFLA's mission is to empower the choice for life by: equipping
11 pregnancy centers with legal counsel and support; enabling pregnancy centers to
12 convert to medical clinic status; and energizing pregnancy centers with a renewed
13 vision for the future.

14 45. NIFLA has 111 members in California.

15 46. Seventy-three of NIFLA's California members are properly licensed
16 to provide medical services, in situations similar to PCC.

17 47. Thirty-eight of NIFLA's California members are not medically
18 licensed and therefore provide only non-medical services, similar to Fallbrook.

19 48. Most of NIFLA's California members are religious organizations
20 that pursue their pro-life message and activities as an exercise of their religious
21 beliefs.

22 49. NIFLA's own religious mission includes helping those members
23 advance their religious beliefs.

1 50. NIFLA's California members are regulated under the Act as either
2 medical centers or non-medical centers.

3 51. NIFLA's California members are subject to the Act's compelled
4 speech requirements.

5 52. NIFLA has organizational standing to represent all of its member
6 pregnancy centers, both licensed and unlicensed, from the State of California. See
7 *New York State Club Ass'n v. City of New York*, 487 U.S. 1, 9 (1988).

8 53. The members of NIFLA would otherwise have standing to sue in
9 their own right in this case.

10 54. The interests that NIFLA seeks to protect are germane to NIFLA's
11 purpose, including the purpose to support its pro-life pregnancy center members
12 and enable them to carry out their missions consistent with their pro-life and
13 religious viewpoints.

14 55. Neither the claims asserted nor the relief requested requires
15 participation of all of NIFLA's individual members in this suit, but can be
16 awarded to NIFLA's members as a group.

17 **Assembly Bill 775, the Reproductive FACT Act**

18 56. The Legislature indicates that the purpose of the Act "is to ensure
19 that California residents make their personal reproductive health care decisions
20 knowing their rights and the health care services available to them." Exhibit A.

21 57. The Act defines "licensed covered facility" as a
22 facility licensed under Section 1204 or an intermittent
23 clinic operating under a primary care clinic pursuant to
subdivision (h) of Section 1206, whose primary purpose

1 is providing family planning or pregnancy-related
 2 services, and that satisfies two or more of the following:
 3 (1) The facility offers obstetric ultrasounds, obstetric
 4 sonograms, or prenatal care to pregnant women; (2) The
 5 facility provides, or offers counseling about,
 6 contraception or contraceptive methods; (3) The facility
 7 offers pregnancy testing or pregnancy diagnosis; (4) The
 8 facility advertises or solicits patrons with offers to
 9 provide prenatal sonography, pregnancy tests, or
 10 pregnancy options counseling; (5) The facility offers
 11 abortion services; (6) The facility has staff or volunteers
 12 who collect health information from clients.

13 *Id.*

14 58. The Act mandates that a licensed covered facility to “disseminate to
 15 clients on site the following notice in English and in the primary threshold
 16 languages for Medi-Cal beneficiaries as determined by the State Department of
 17 Health Care Services for the county in which the facility is located.” *Id.*

18 59. The required notice for licensed covered facilities must state the
 19 following: “California has public programs that provide immediate free or low-
 20 cost access to comprehensive family planning services (including all FDA-
 21 approved methods of contraception), prenatal care, and abortion for eligible
 22 women. To determine whether you qualify, contact the county social services
 23 office at [insert the telephone number].” *Id.*

60. The notice must be displayed in one of the following ways:

(A) A public notice placed in a conspicuous place where
 individuals wait that may be easily read by those seeking
 services from the facility. The notice shall be at least 8.5
 inches by 11 inches and written in no less than 22-point
 type;

(B) A printed notice distributed to all clients in no less

1 than 14-point type; or

2 (C) A digital notice distributed to all clients that can be
3 read at the time of check-in or arrival, in the same point
4 type as other digital disclosures. A printed notice as
described in subparagraph (B) shall be available for all
clients who cannot or do not wish to receive the
information in digital format.

5 *Id.*

6 61. Upon information and belief, county social services in California
7 provide or refer women for abortions.

8 62. Therefore the Act requires “licensed covered facilities” to provide
9 referrals for abortion and/or arrange for referrals for abortion by requiring such
10 centers to provide contact information for the local county social services to all
11 clients so that they may procure an abortion.

12 63. PCC and NIFLA’s licensed medical pregnancy center members meet
13 the definition of licensed covered facilities for the purpose of the Act.

14 64. PCC is a facility licensed as a primary care clinic under Section
15 1204.

16 65. PCC’s primary purpose is providing pregnancy-related information
17 and services.

18 66. PCC offers obstetric ultrasounds or obstetric sonograms to pregnant
19 women.

20 67. PCC offers pregnancy testing or pregnancy diagnosis.

21 68. PCC advertises or solicits patrons with offers to provide prenatal
22 sonography, pregnancy tests, or pregnancy options counseling.
23

1 69. PCC has staff or volunteers who collect health information from
2 clients.

3 70. NIFLA's licensed medical facility members meet the Act's
4 definition of "licensed covered facility" for reasons substantially similar to PCC.

5 71. PCC and NIFLA's licensed medical pregnancy center members are
6 subject to the Act's required disclosures as a "licensed covered facility."

7 72. The Act defines "unlicensed covered facility" as a

8 facility that is not licensed by the State of California and
9 does not have a licensed medical provider on staff or
10 under contract who provides or directly supervises the
11 provision of all of the services, whose primary purpose is
12 providing pregnancy-related services, and that satisfies
13 two or more of the following: (1) The facility offers
14 obstetric ultrasounds, obstetric sonograms, or prenatal
15 care to pregnant women; (2) The facility offers
pregnancy testing or pregnancy diagnosis; (3) The
facility advertises or solicits patrons with offers to
provide prenatal sonography, pregnancy tests, or
pregnancy options counseling; (4) The facility has staff
or volunteer who collect health information from clients.

16 *Id.*

17 73. An unlicensed covered facility "shall disseminate to clients on site
18 and in any print and digital advertising materials including Internet Web sites, [a
19 notice] in English and in the primary threshold languages for Medi-Cal
20 beneficiaries as determined by the State Department of Health Care Services for
21 the county in which the facility is located." *Id.*

22 74. The notice shall state: "This facility is not licensed as a medical
23 facility by the State of California and has no licensed medical provider who

1 provides or directly supervises the provision of services.” *Id.*

2 75. The onsite notice must be “at least 8.5 inches by 11 inches and
3 written in no less than 48-point type, and shall be posted conspicuously in the
4 entrance of the facility and at least one additional area where clients wait to
5 receive services.” *Id.*

6 76. The notice in the advertising material must be “clear and
7 conspicuous. ‘Clear and conspicuous’ means in larger point type than the
8 surrounding text, or in contrasting type, font, or color to the surrounding text of
9 the same size, or set off from the surrounding text of the same size by symbols or
10 other marks that call attention to the language.” *Id.*

11 77. The Act does not define “digital advertising materials” beyond
12 saying it includes “Internet Web Sites.”

13 78. The Act is vague about what kinds of materials count as “digital
14 advertising materials” because the meaning of the term is arbitrary and causes
15 ordinary people to guess as to its meaning.

16 79. Advertisements placed on “Internet Web Sites” have limits on their
17 size, such as in the number of characters that can be used.

18 80. For example, Google limits the number of characters posted in a
19 headline, URL, or description line.

20 81. Inserting the disclosures into Plaintiffs’ advertisements would
21 severely restrict, or preclude altogether, the space and number of characters they
22 could use to recite their own messages in some advertisements placed on
23 “Internet Web Sites.”

1 82. Fallbrook, and NIFLA's non-medical pregnancy center members in
2 California, appear to qualify as unlicensed covered facilities for the purpose of
3 the Act.

4 83. Fallbrook is not licensed by the State of California.

5 84. Fallbrook does not have a licensed medical provider on staff or
6 under contract who provides or directly supervises provision of all its services.

7 85. Fallbrook has a licensed medical provider under contract to take
8 referrals from Fallbrook of women who want an ultrasound, and then to provide
9 such ultrasounds in a separate nearby mobile facility owned by the contractor.

10 86. Fallbrook does not contract with licensed medical providers to
11 provide all of "the services" Fallbrook provides, because none of Fallbrook's
12 other services are medical.

13 87. Fallbrook has a nurse employee and several nurses among its
14 volunteer counselors.

15 88. Fallbrook's nurses do not provide medical services onsite, but are
16 available to provide information about specific topics such as breastfeeding, diet,
17 or printed brochures that discuss medical studies, or to refer clients to externally
18 provided services.

19 89. Fallbrook does not itself provide obstetric ultrasounds or obstetric
20 sonograms.

21 90. Fallbrook contracts with an outside provider, which provides
22 ultrasound services in a nearby separate facility.

23 91. The Act is vague about which "services" Fallbrook's nurses need to

1 “provide[] or directly supervise[]” in order to disqualify Fallbrook from the
2 definition of an “unlicensed covered facility.”

3 92. The Act is vague about whether Fallbrook offers “obstetric
4 ultrasounds, obstetric sonograms, or prenatal care to pregnant women.”

5 93. Fallbrook does not offer medical prenatal care.

6 94. Fallbrook offers non-medical care to pregnant women in various
7 forms.

8 95. Fallbrook does not test bodily fluids to determine pregnancy, nor
9 does it diagnose pregnancy or pregnancy tests.

10 96. Fallbrook offers free pregnancy test kits that women self-administer
11 and self-diagnose themselves.

12 97. The Act does not define “offers pregnancy testing or pregnancy
13 diagnosis.”

14 98. The Act is vague about the meaning of “offers pregnancy testing or
15 pregnancy diagnosis” because the meaning of the term is arbitrary and causes
16 ordinary people to guess as to its meaning.

17 99. Fallbrook advertises that prenatal sonography is available,

18 100. The sonography that Fallbrook advertises is provided by nearby
19 separate licensed medical provider with whom Fallbrook contracts.

20 101. Fallbrook advertises that it provides non-medical pregnancy options
21 counseling.

22 102. Fallbrook advertises that it distributes free pregnancy test kits, which
23 the women self-administer.

1 103. Fallbrook does not offer to engage in testing or diagnosis of
2 pregnancy.

3 104. Fallbrook has staff or volunteers who collect information from
4 clients that relates to their possible pregnancies.

5 105. The Act does not define “health information.”

6 106. The Act is vague about what kind of information constitutes “health
7 information” because the meaning of the term is arbitrary and causes ordinary
8 people to guess as to its meaning.

9 107. Fallbrook may qualify as an “unlicensed covered facility” under the
10 Act.

11 108. The Act does not clearly define “unlicensed covered facility.”

12 109. The Act is vague about whether Fallbrook or a similar center
13 qualifies as “unlicensed covered facility” because the meaning of the term is
14 arbitrary and causes ordinary people to guess as to its meaning.

15 110. Fallbrook has a reasonable fear that it does qualify and is subject to
16 the Act.

17 111. NIFLA’s non-medically licensed members in California may qualify
18 as an “unlicensed covered facility” under the Act.

19 112. The Act is vague about whether they qualify, for reasons
20 substantially similar to those involving Fallbrook.

21 113. The Act does not apply to the following: (1) A clinic directly
22 conducted, maintained, or operated by the United States or any of its
23 departments, officers, or agencies; (2) A licensed primary care clinic that is

1 enrolled as a Medi-Cal provider and a provider in the Family Planning, Access,
2 Care, and Treatment Program. *Id.* (hereinafter “the Exemption”).

3 114. Neither PCC, Fallbrook, nor NIFLA’s California members are
4 clinics directly conducted, maintained, or operated by the United States or any of
5 its departments, officers, or agencies, nor licensed primary care clinics that are
6 enrolled as a Medi-Cal provider and a provider in the Family Planning, Access,
7 Care, and Treatment Program.

8 115. Upon information and belief, the Act’s Exemption, in purpose and
9 effect, applies to facilities which provide abortion services, freeing them from the
10 Act’s disclosure requirements, while leaving pro-life facilities subject to them.

11 116. Covered facilities which fail to comply with the Act are liable for a
12 civil penalty of \$500 for a first offense and \$1000 for each subsequent offense.
13 *Id.*

14 117. The Attorney General, city attorney, or county counsel is empowered
15 to bring an action to impose a civil penalty pursuant to the Act after: (1)
16 “Providing the covered facility with reasonable notice of noncompliance, which
17 informs the facility that it is subject to a civil penalty if it does not correct the
18 violation within 30 days from the date the notice is sent to the facility”; and (2)
19 “Verifying that the violation was not corrected” within the 30-day period. *Id.*

20 118. Fallbrook and NIFLA’s non-licensed California members engage in
21 speech, services and advertising that cannot be changed, have disclosures added,
22 or corrected to comply with the Act in less than 30 days after receiving notice of
23 a warning of violation under the Act.

1 119. The Act compels PCC, Fallbrook, and NIFLA's California members
2 (hereinafter "Plaintiff Facilities") to engage in government-mandated speech.

3 120. The pregnancy discussions and help provided by Plaintiff Facilities
4 are of an ideologically sensitive nature.

5 121. Forcing the Act's disclosures on Plaintiff Facilities' speech is
6 detrimental to their mission of counseling and helping women from their
7 viewpoint.

8 122. Plaintiff Facilities desire not to utter the disclosures required by the
9 Act.

10 123. Plaintiff Facilities intend to not comply with the Act.

11 124. Plaintiff Facilities desire to continue engaging in their speech and
12 expressive services while refusing to post, distribute, or otherwise communicate
13 the required compelled statements.

14 125. Plaintiff Facilities' refusal to comply with the Act would subject
15 them to fines and prosecution by Defendants under the Act.

16 126. Plaintiff Facilities fear the harms of prosecution under the Act if they
17 fail to comply.

18 127. Plaintiff Facilities are non-profit organizations with limited funding
19 and relatively small budgets.

20 128. The Act's penalties would significantly harm Plaintiff Facilities'
21 ability to continue their expressive operations.

22 129. The Act imposes three untenable choices on Plaintiff Facilities:
23 succumb to their fear of prosecution and comply with the Act in violation of their

1 expressive views and religious beliefs; continue their speech and services without
2 complying with the Act and be prosecuted, penalized, and injured in their ability
3 to pursue their expressive operations; or cease their expressive activities and
4 services altogether.

5 130. Plaintiffs face a credible threat of adverse state action due to the Act.

6 131. Requiring Plaintiff Facilities to utter the Act's disclosures forces
7 Plaintiff Facilities to undermine the content, context and tone of the viewpoint
8 that they wish to deliver in their pro-life messages.

9 132. Requiring the religious Plaintiff Facilities to utter the Act's
10 disclosures imposes a burden on their exercise of their religious beliefs by
11 requiring them to promote abortion and/or to undermine their pro-life message of
12 love and support which they pursue because of their religious beliefs.

13 133. The Act imposes an impermissible penalty and chill on Plaintiff
14 Facilities' speech, subjecting Plaintiff Facilities to irreparable harm.

15 134. The Act's regulation of unlicensed facilities imposes penalties on
16 unlicensed Plaintiff Facilities based on vague terms that do not provide adequate
17 notice of whether or how the law applies and what entities must comply.

18 135. The Act's requirement of "clear and conspicuous" disclosure
19 language on unlicensed Plaintiff Facilities' "digital advertising materials
20 including Internet Web sites" is vague regarding the location and manner in
21 which the disclosures must be placed.

22 136. The Act's requirement of disclosure language on unlicensed Plaintiff
23 Facilities' advertising materials burdens the size, content, viewpoint and tone of

1 their message.

2 137. The Act's disclosure requirements for licensed Plaintiff Facilities
3 requires that they "provide referrals for . . . abortions" or "make arrangements"
4 for such referrals, in the meaning of 42 U.S.C. § 238n.

5 138. The licensed medical Plaintiff Facilities are health care entities
6 protected under 42 U.S.C. § 238n.

7 139. The health providers in Plaintiff Facilities responsible for
8 compliance with the Act include individual physicians.

9 140. The State of California receives federal funding including
10 "governmental payments provided as reimbursement for carrying out health-
11 related activities" that subject it to 42 U.S.C. § 238n.

12 141. 42 U.S.C. § 238n is an "Act of Congress providing for the protection
13 of civil rights" belonging to the Plaintiff Facilities, under 28 U.S.C. § 1343.

14 142. Licensed Plaintiff Facilities have both individual rights under 42
15 U.S.C. § 238n and remedies under 28 U.S.C. § 1343 and 42 U.S.C. § 1983 to
16 bring this action for the violation of their rights under 42 U.S.C. § 238n.

17 143. Enforcement of the Act will irreparably harm Plaintiff Facilities by
18 infringing upon their First Amendment rights to free speech and religious
19 exercise; the Fourteenth Amendment right to due process for the unlicensed
20 facilities and freedom from uncabined government discretion; and the individual
21 rights contained in 42 U.S.C. § 238n for the licensed facilities.

22 144. Defendants are vested with enforcing the Act against Plaintiff
23 Facilities.

1 145. Passage of the Act into law represents an imminent, concrete and
2 reliable threat that Defendants will enforce the Act against Plaintiff Facilities.

3 146. Enjoining Defendants from enforcing the Act is necessary to protect
4 Plaintiff Facilities from the chill and punishment imposed on their rights.

5 147. Each and all of the real and threatened enforcement actions alleged
6 of the Defendants, their officers, agents, servants, employees, or persons acting at
7 their behest or direction, were done and are continuing to be done under the color
8 of state law, including the statutes, regulations, customs, policies, and usages of
9 the State of California.

10 148. Plaintiffs have no adequate remedy at law.

11 **CLAIMS FOR RELIEF**

12 **FIRST CLAIM: VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST**
13 **AMENDMENT OF THE UNITED STATES CONSTITUTION**

14 149. Paragraphs 1–148 are incorporated as if fully set forth herein.

15 150. The First Amendment to the United States Constitution provides in
16 relevant part: “Congress shall make no law . . . abridging the freedom of speech.”

17 151. The First Amendment is applicable to state and local governments by
18 incorporation in the Fourteenth Amendment.

19 152. The Act unconstitutionally restricts Plaintiff Facilities’ rights of free
20 speech, which includes the right to refrain from speaking, to choose how and
21 when to deliver particular messages, and the right to refuse to speak a
22 government-dictated message.

23 153. The Act unconstitutionally forces Plaintiff Facilities, on pain of

1 government penalty, to engage in government disclaimers that Plaintiff Facilities
2 would not otherwise recite, that undermine Plaintiff Facilities' message, and that
3 contradict Plaintiff Facilities' viewpoint from which they speak.

4 154. The Act is unconstitutionally and substantially overbroad.

5 155. The Act's imposition of disclosures on unlicensed Plaintiff
6 Facilities' advertisements is an unjustified restriction of their ability to advertise
7 their messages.

8 156. The Act is unconstitutionally underinclusive, because by its
9 Exemption it omits many centers that provide pregnancy related services.

10 157. The Act imposes an unconstitutional chill and penalty on Plaintiff
11 Facilities' speech, and without declaratory and injunctive relief, will continue to
12 do so.

13 158. The Act is a content-based regulation of speech.

14 159. The Act unconstitutionally discriminates against Plaintiff Facilities'
15 speech based on their viewpoint, including because it requires licensed facilities
16 to promote abortion options, and it exempts from the Act's requirements facilities
17 that provide certain family planning or Medi-Cal services.

18 160. The Act poses an unconstitutional risk of viewpoint discrimination
19 by conferring unfettered discretion on government officials to interpret the Act's
20 provisions in deciding which unlicensed facilities must comply.

21 161. The Act is subject to strict scrutiny.

22 162. The Act does not promote any legitimate, or compelling, government
23 interest, and Defendants lack any evidence or sufficient evidence to demonstrate

1 the existence of such an interest.

2 163. The Act is not tailored at all, much less narrowly tailored, to further
3 any governmental interest, and it does not do so by a means least restrictive of
4 Plaintiff Facilities' speech.

5 164. Defendants have ample alternative channels to achieve any alleged
6 interest without imposing the Act's burdens on the speech of Plaintiffs.

7 165. The Act is an unconstitutional restriction of speech under any
8 standard applicable to the licensed Plaintiff Facilities.

9 166. The Act is unconstitutional not only as applied to Plaintiff Facilities,
10 but on its face as applied to any facility.

11 167. Accordingly, the Act violates the First Amendment of the United
12 States Constitution.

13 168. Therefore, the Act and Defendants' enforcement thereof
14 unconstitutionally infringes on Plaintiffs' rights, thereby entitling Plaintiffs to the
15 relief requested below, pursuant to 42 U.S.C. §1983.

16 169. WHEREFORE, Plaintiffs respectfully request that the Court grant
17 the relief set forth hereinafter in the prayer for relief.

18
19 **SECOND CLAIM: VIOLATION OF THE DUE PROCESS CLAUSE OF THE**
20 **FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION; ALLEGED**
BY THE NON-LICENSED PLAINTIFF FACILITIES

21 170. Paragraphs 1–148 are incorporated as if fully set forth herein.

22 171. The Fourteenth Amendment of the United States Constitution's right
23 to due process protects against the government's imposition of penalties such as

1 fines based on vague terms that do not give regulated entities adequate notice of
2 whether or how the law applies and what entities can do to comply.

3 172. The Act defines “unlicensed covered facility” as a:

4 [F]acility that is not licensed by the State of California
5 and does not have a licensed medical provider on staff or
6 under contract who provides or directly supervises the
7 provision of all of the services, whose primary purpose is
8 providing pregnancy-related services, and that satisfies
9 two or more of the following: (1) The facility offers
10 obstetric ultrasounds, obstetric sonograms, or prenatal
11 care to pregnant women; (2) The facility offers
pregnancy testing or pregnancy diagnosis; (3) The
facility advertises or solicits patrons with offers to
provide prenatal sonography, pregnancy tests, or
pregnancy options counseling; (4) The facility has staff
or volunteers who collect health information from clients.

12 Exh. A.

13 173. The Act’s unlicensed facility definition is vague because it does not
14 adequately define: (a) which “services” a nurse or contract medical provider must
15 provide or directly supervise to disqualify a facility from the definition; (b)
16 “directly supervise”; (c) “offers” obstetric ultrasounds, when the ultrasounds are
17 performed separately by a contract licensed provider; (d) “offers pregnancy
18 testing or diagnosis” when the facility distributes pregnancy test kits that women
19 self-administer but the facility does not test or diagnose pregnancy; or (e) “health
20 information.”

21 174. Fallbrook, and NIFLA’s unlicensed facility members in California,
22 appear to fit the definition of “unlicensed covered facility,” but they cannot know
23 for sure because of the Act’s vagueness.

1 175. The Act by appearance and intent targets pro-life pregnancy centers
2 like Plaintiff Facilities, and therefore they reasonably believe that they fall under
3 the definitions and requirements of the Act, despite its vagueness.

4 176. This vagueness chills the speech of Fallbrook and the other
5 unlicensed Plaintiff Facilities, who must assume that the Act applies to them and
6 accept the Act's burdens on their speech for fear that the Act's penalties will be
7 applied to them if they do not.

8 177. The Act's vagueness gives government officials unbridled discretion
9 to determine whether the unlicensed Plaintiff Facilities are covered under the Act
10 or not, implicating the risk of viewpoint discrimination in violation of Fallbrook's
11 and NIFLA's unlicensed members' rights under the Fourteenth Amendment in
12 conjunction with the First Amendment.

13 178. Accordingly, the Act violates Fallbrook's and NIFLA's unlicensed
14 members' Fourteenth Amendment guarantees of due process.

15 179. WHEREFORE, Plaintiffs respectfully request that the Court grant
16 the relief set forth hereinafter in the prayer for relief.

17
18 **THIRD CLAIM: VIOLATION OF THE RIGHTS OF PLAINTIFF FACILITIES UNDER**
19 **THE FIRST AMENDMENT'S FREE EXERCISE OF RELIGION CLAUSE**

20 180. Paragraphs 1–148 are incorporated as if fully set forth herein.

21 181. Plaintiff Facilities exercise their religion in their provision of pro-life
22 information and services, and in the way in which they choose to speak and not
23 speak during the same.

1 182. Plaintiff Facilities are religious organizations that can and do
2 exercise religion, including in promoting their pro-life message and services.

3 183. Forcing Plaintiff Facilities to recite the Act's disclosures
4 substantially burdens the exercise of religious beliefs of Plaintiff Facilities,
5 undermining their pro-life message and the way in which they promote that
6 message in pursuit of their religious beliefs.

7 184. The Act is not neutral or generally applicable, including because it
8 exempts certain facilities that offer particular family planning or Medi-Cal
9 services.

10 185. Defendants cannot offer sufficient justification to burden Plaintiff
11 Facilities' free exercise of religion by means of the Act.

12 186. The Act therefore violates Plaintiff Facilities' rights under the Free
13 Exercise of Religion Clause.

14 187. The Act also violates Plaintiff Facilities' "hybrid" rights under the
15 Free Exercise of Religion Clause in conjunction with their freedom of speech.

16 188. The First Amendment's Free Exercise of Religion Clause requires
17 the government to satisfy strict scrutiny before it may burden an organization's
18 exercise of religion in conjunction with exercising its rights of speech.

19 189. The Act infringes on the hybrid of Plaintiffs' Free Exercise of
20 Religion and Free Speech rights.

21 190. Defendants cannot show a compelling interest for imposing the Act
22 on Plaintiff Facilities, nor can they demonstrate that the Act pursues its goals in a
23 means least restrictive of Plaintiff Facilities' rights.

1 191. Accordingly, the Act violates the Plaintiff Facilities' First
2 Amendment hybrid rights of Free Exercise of Religion and Free Speech.

3 192. WHEREFORE, Plaintiffs respectfully request that the Court grant
4 the relief set forth hereinafter in the prayer for relief.

5 **FOURTH CLAIM: VIOLATION OF THE COATS-SNOWE AMENDMENT, 42 U.S.C.**
6 **§238N, ALLEGED BY THE LICENSED MEDICAL PLAINTIFF FACILITIES**

7 193. Paragraphs 1–148 are incorporated as if fully set forth herein.

8 194. Defendants violated, and continue to violate, 42 U.S.C. § 238n by
9 requiring licensed pregnancy centers to provide referrals for abortion and/or to
10 make arrangements for referrals for abortion by requiring such licensed centers to
11 provide contact information for the local county social services office in order to
12 procure abortion services.

13 195. By requiring licensed pregnancy centers to provide contact
14 information to local county social services offices for abortion services,
15 Defendants have violated Plaintiffs' rights under 42 U.S.C. § 238n.

16 196. Plaintiffs have suffered and continue to suffer injury and irreparable
17 harm by Defendants' actions, thereby giving rise to the need for injunctive,
18 declaratory and other forms of relief against Defendants.

19 197. WHEREFORE, Plaintiffs respectfully request that the Court grant
20 the relief set forth hereinafter in the prayer for relief.

21
22 **FIFTH CLAIM: VIOLATION OF THE FREE SPEECH CLAUSE OF THE CALIFORNIA**
23 **CONSTITUTION, ART. I, SEC. 2(A). ALLEGED BY ALL PLAINTIFF FACILITIES**

1 198. Paragraphs 1–148 are incorporated as if fully set forth herein.

2 199. The free speech clause of the California Constitution, Art. I, Sec.
3 2(a), provides that “[e]very person may freely speak, write and publish his or her
4 sentiments on all subjects, being responsible for the abuse of this right. A law
5 may not restrain or abridge liberty of speech or press.”

6 200. The free speech clause of the California Constitution provides even
7 “broader” and “greater” protections for speech than the First Amendment to the
8 U.S. Constitution. *Gerawan Farming, Inc. v. Lyons*, 101 Cal. Rptr. 2d 470, 486
9 (Cal. 2000).

10 201. The Act unconstitutionally restricts Plaintiff Facilities’ rights of free
11 speech, which includes the right to refrain from speaking, to choose how and
12 when to deliver particular messages, and the right to refuse to speak a
13 government-dictated message.

14 202. The Act unconstitutionally forces Plaintiff Facilities, on pain of
15 government penalty, to engage in government disclaimers that Plaintiff Facilities
16 would not otherwise recite, that undermine Plaintiff Facilities’ message, and that
17 contradict Plaintiff Facilities’ viewpoint from which they speak.

18 203. The Act is unconstitutionally and substantially overbroad.

19 204. The Act’s imposition of disclosures on unlicensed Plaintiff
20 Facilities’ advertisements is an unjustified restriction of their ability to advertise
21 their messages.

22 205. The Act is unconstitutionally underinclusive, because by its
23 Exemption it omits many centers that provide pregnancy related services.

1 206. The Act imposes an unconstitutional chill and penalty on Plaintiff
2 Facilities' speech, and without declaratory and injunctive relief, will continue to
3 do so.

4 207. The Act is a content-based regulation of speech.

5 208. The Act unconstitutionally discriminates against Plaintiff Facilities'
6 speech based on their viewpoint, including because it requires licensed facilities
7 to promote abortion options, and it exempts from the Act's requirements facilities
8 that provide certain family planning or Medi-Cal services.

9 209. The Act poses an unconstitutional risk of viewpoint discrimination
10 by conferring unfettered discretion on government officials to interpret the Act's
11 provisions in deciding which unlicensed facilities must comply.

12 210. The Act is subject to strict scrutiny.

13 211. The Act does not promote any legitimate, or compelling, government
14 interest, and Defendants lack any evidence or sufficient evidence to demonstrate
15 the existence of such an interest.

16 212. The Act is not tailored at all, much less narrowly tailored, to further
17 any governmental interest, and it does not do so by a means least restrictive of
18 Plaintiff Facilities' speech.

19 213. Defendants have ample alternative channels to achieve any alleged
20 interest without imposing the Act's burdens on the speech of Plaintiffs.

21 214. The Act is an unconstitutional restriction of speech under any
22 standard applicable to the licensed Plaintiff Facilities.

23 215. The Act is unconstitutional not only as applied to Plaintiff Facilities,

1 but on its face as applied to any facility.

2 216. Accordingly, the Act violates the free speech clause of the California
3 Constitution, Art. I, Sec. 2(a).

4 217. WHEREFORE, Plaintiffs respectfully request that the Court grant
5 the relief set forth hereinafter in the prayer for relief.

6
7 **PRAYER FOR RELIEF**

8 Plaintiffs respectfully request the following relief:

9 A. Declare the Act unconstitutional under the United States and
10 California Constitutions and in violation of federal statute on its face, and as-
11 applied to Plaintiffs;

12 B. Enter preliminary and permanent injunctions against enforcement of
13 the Act;

14 C. Award Plaintiff the costs of the litigation, including reasonable
15 attorneys' fees and expenses under 42 U.S.C. § 1988;

16 D. Enter preliminary and permanent injunctions ordering Defendant
17 Brown to disgorge federal funds the State of California has received from United
18 States Department of Health and Human Services and other federal offices in an
19 appropriate amount and in excess of \$75,000, penalizing them for the injury they
20 threaten to cause Plaintiffs and others, and prohibiting the receipt of further
21 funding until they have remedied that injury, and until they have brought state
22 law into compliance with 42 U.S.C. § 238n; and

23 E. Award any and all other relief the Court deems just and proper.

1 Plaintiffs demand a jury for all issues so triable

2 Respectfully submitted on this 12th day of October, 2015

3
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Attorneys for Plaintiffs

**Application for Admission Pro Hac Vice
forthcoming*

*** Notice of Appearance forthcoming*

VERIFICATION OF COMPLAINT

PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on October 12, 2015

s/ Thomas Glessner
THOMAS GLESSNER, J.D.
President
National Institute of Family and Life Advocates

VERIFICATION OF COMPLAINT

PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing *National Institute of Family and Life Advocates v. Harris* complaint is true and correct to the best of my knowledge.

Executed on October 12, 2015

s/ Josh McClure
JOSH MCCLURE
Executive Director
Pregnancy Care Clinic

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VERIFICATION OF COMPLAINT

PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on October 12, 2015

s/ Carolyn Koole
CAROLYN KOOLE
Executive Director
Fallbrook Pregnancy Resource Center